

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0466P

Sales and Use Tax

Calendar Years 1995, 1996, 1997

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protests the penalty assessed on an audit completed on April 28, 1999.

Taxpayer failed to self-assess and remit use tax on clearly taxable items that were issues in several prior audits. Taxpayer is a Delaware corporation that was audited previously on September 24, 1993 and December 11, 1989. Although the taxpayer has made corrections, it is approximately twenty-seven percent (27%) underpaid for use tax.

1. **Tax Administration** – Penalty

DISCUSSION

Taxpayer requests a waiver of penalty because of the low error rate on the audit.

Taxpayer's audit report revealed that the items assessed were issues in a prior audit. Although the taxpayer made corrections, it still failed to self assess tax on twenty-seven percent (27%) of its taxable purchases. The taxpayer states the error rate on audit was low, however, it did not take into consideration that the error rate was based upon total exempt purchases less the capital items divided into taxable expenses for the same period. The error rate is not the determining factor; the amount of use tax paid versus the amount due upon audit is the correct factor.

The taxpayer has not provided reasonable cause to allow the department to waive the negligence penalty.

FINDING

Taxpayer's protest is denied.